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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 SALLY DINIUS, a married person,

10 Plaintiff,

11 v.

12 WALMART STORES, INC., a Delaware  
corporation doing business in Washington,

13 Defendant.  
14

NO.

(KING COUNTY SUPERIOR COURT NO.  
20-2-07868-9 KNT)

NOTICE OF REMOVAL BY  
DEFENDANT WALMART INC.

***CLERK'S ACTION REQUIRED***

15 TO: CLERK OF THE COURT;

16 TO: PLAINTIFF SALLY DINIUS; AND

17 TO: COUNSEL FOR PLAINTIFF.

18 Pursuant to the provisions of 28 U.S.C. § 1441(a) and (b), 28 U.S.C. § 1446, and 28  
19 U.S.C. § 1332, Defendant WALMART INC. ("Walmart") (incorrectly identified in the operative  
20 Complaint as WALMART STORES, INC.) hereby removes the above-captioned case from the  
21 Superior Court of King County, Washington, where it is currently pending, to the United States  
22 District Court for the Western District of Washington at Seattle.

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NOTICE OF REMOVAL BY DEFENDANT WALMART INC.- 1

**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

1 I. STATEMENT OF FACTS

2 1. Underlying Incident

3 Plaintiff SALLY DINIUS (“Plaintiff”) alleges that she was “severely injured” while  
4 shopping at a Walmart store in Covington, Washington, when a bottle of juice fell off a shelf  
5 onto her neck and shoulder area. *See* Declaration of Eddy Silverman, Esq., attached hereto as  
6 **Exhibit A** (describing/attesting to exhibits); *see also* Complaint, attached hereto as **Exhibit B**,  
7 at ¶¶ 2.1, 3.8.

8 2. Relevant Procedural Facts

9 Plaintiff filed a Complaint in the Superior Court of Washington for King County on  
10 April 16, 2020. *See* Ex. B. There are no specific allegations or representations pertaining to  
11 damages in the Complaint (no amounts claimed). *See id.*

12 On June 26, 2020, Walmart served an RCW 4.28.360 Request for Statement of  
13 Damages on Plaintiff. *See* Pl.’s Resp. to Walmart’s Request, attached hereto as **Exhibit C**.  
14 Plaintiff served a response on July 9, 2020—which is erroneously dated *January* 6, 2020<sup>1</sup>—  
15 wherein Plaintiff proposed or asserted that this matter has “a case value of \$500,000.” *See id.*

16 II. BASIS FOR REMOVAL

17 A. Removal Is Timely

18 The notice of removal of a civil action or proceeding shall be filed within 30 days after  
19 the receipt by the defendant, through service or otherwise, of a copy of the initial pleading  
20 setting forth the claim for relief upon which such action or proceeding is based, or within 30  
21 days after the service of summons upon the defendant if such initial pleading has then been  
22 filed in court and is not required to be served on the defendant, whichever period is shorter. 28  
23 U.S.C. § 1446. If a case stated by the initial pleading is not removable, a notice of removal  
24

25 <sup>1</sup> Which could not possibly be correct because Walmart did not even serve the request for a statement of damages  
until June 26, 2020.

1 may be filed within 30 days after receipt by the defendant, through service or otherwise, of a  
2 copy of an amended pleading, motion, order or “other paper” from which it may first be  
3 ascertained that the case is one which is, or which has become removable. *Id.* § 1446(b)(3).

4 In this matter, the case stated by the initial pleading was not removable (no specific  
5 amounts claimed in Complaint); however, Plaintiff’s response to Walmart’s Request for  
6 Statement of Damages constitutes “other paper” within the meaning of 28 USC § 1446 from  
7 which it could be ascertained that this case is removable. As this Notice is being filed within  
8 30 days of receipt of that response/“other paper,” this Notice is timely.

9 B. This Court Has Original Jurisdiction Over This Matter Under 28 U.S.C. § 1332(a)

10 The district courts shall have original jurisdiction of all civil actions where the matter in  
11 controversy (1) exceeds the sum or value of \$75,000, exclusive of interest and costs, and (2) is  
12 between citizens of different states. 28 U.S.C. § 1332(a)(1). For the purposes of sections 1332  
13 and 1441 of Title 28, a corporation shall be deemed to be a citizen of (a) the state in which it  
14 has been incorporated, or (b) the state wherein it has its principal place of business. 28 U.S.C.  
15 § 1332(c)(1); *see also Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 924 (2011).

16 1. The Matter In Controversy Exceeds The Sum Or Value Of \$75,000

17 Per Plaintiff’s response to Walmart’s Request for Statement of Damages, Plaintiff’s  
18 “good faith estimate of Plaintiff’s known [general and special] damages” is \$500,000.00.

19 2. There Is Total Diversity Between The Parties

20 Upon information and belief, Plaintiff is a resident of King County, Washington. *See*  
21 Ex. B at ¶1.1. Thus, Plaintiff is a “citizen of” Washington State. Walmart Inc. is (a)  
22 incorporated in Delaware, and (b) its principal place of business is in Arkansas. Thus, Walmart  
23 is a “citizen of” either Delaware or Arkansas, but not Washington State. Based on the  
24 foregoing, there is total diversity between these parties as described in 28 USC 1332(a)(1).

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1 III. PROCEDURAL COMPLIANCE

2 A. This Notice Complies With Applicable Local And Federal Rules

3 Pursuant to LCR 101(b), in cases removed from state court, the removing defendant  
4 shall file contemporaneously with the notice of removal:

- 5 (1) A copy of the operative complaint, which must be attached as a separate  
6 “attachment” in the electronic filing system and labeled as the  
7 “complaint” or “amended complaint.”  
8 (2) A certificate of service which lists all counsel and pro se parties who  
9 have appeared in the action with their contact information, including  
10 email address.  
11 (3) A copy of any Jury Demand filed in the state court, which must be filed  
12 as an attachment and labeled “Jury Demand.”

11 In addition to the foregoing, the removing defendant(s) shall, within 14 days of filing this  
12 Notice, or contemporaneously, file with the clerk of this Court black-on-white copies of all  
13 additional records and proceedings in the state court, together with verification that they are  
14 true and complete copies. LCR 101(c).

15 In accordance with the above rules, true and complete copies of the following are  
16 attached hereto:

- 17 1. Complaint (Ex. B), which is included as a separate attachment in the electronic  
18 filing system, and labeled as the “Complaint”;  
19 2. Certificate of Service, attached hereto as **Exhibit D**; and  
20 3. True and correct copies of all additional records and proceedings filed in the  
21 state court proceeding being removed by virtue of this petition, attached hereto as **Exhibit E**.  
22 *See also* Ex. A (attesting to and declaring truth and completeness of these filings in accordance  
23 with LCR 101(c)).

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1 These documents/exhibits constitute and contain the entirety of the records and proceedings  
2 filed in King County Superior Court as of the date of filing this Notice. A Jury Demand was  
3 filed in state court in this matter, attached hereto as **Exhibit F.**

4  
5 **B. This Notice Is Properly Filed In This Court, And The King County Superior Court Is On  
Notice Of These Proceedings**

6 This Notice is properly filed in the United States District Court for the Western District  
7 of Washington because this Court embraces King County, the county in which the state court  
8 action is now pending. *See* 28 U.S.C. §§ 128(b) and 1441(a).

9 Pursuant to 28 U.S.C. §§ 1446(d), Walmart is filing a copy of this Notice with the Clerk  
10 of the King County Superior Court, and is also serving a copy of this Notice on counsel of record  
11 in the state court action.

12 **IV. CONCLUSION**

13 Walmart hereby removes this matter from the King County Superior Court to the  
14 United States District Court for the Western District of Washington at Seattle pursuant to 28  
15 U.S.C. §§ 1332, 1441, and 1446. By seeking removal, Walmart does not waive any defenses,  
16 including but not limited to lack of personal jurisdiction, insufficiency of process, or  
17 insufficiency of service of process.

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1 DATED this 24<sup>th</sup> day of July, 2020.

2 WILLIAMS, KASTNER & GIBBS PLLC

3  
4 By s/Rodney L. Umberger  
Rodney L. Umberger, WSBA No. 24948  
5 s/Eddy Silverman  
Eddy Silverman, WSBA No. 53494

6 Two Union Square  
7 601 Union Street, Suite 4100  
8 Seattle, WA 98101-2380  
9 Phone: 206.628.6600  
Fax: 206.628.6611  
Email: rumberger@williamskastner.com  
esilverman@williamskastner.com

10 ***Counsel for Defendant Walmart Inc.***

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies under penalty of perjury under the laws of the State of  
3 Washington that on the date indicated below, I caused service of a true and correct copy of the  
4 foregoing document in the manner indicated below to:

5 Marlena Grundy, WSBA 47026 ☒ ECF  
6 PNW Strategic Legal Solutions, PLLC  
7 1408 140<sup>th</sup> Pl. N, Suite 170  
8 Bellevue, WA 98007  
9 Tel: (206) 604-91999  
10 Email: [marlena@pnwsls.com](mailto:marlena@pnwsls.com)  
11 [staff@pnwstrategiclegalsolutions.com](mailto:staff@pnwstrategiclegalsolutions.com)

12 ***Counsel for Plaintiff***

13 Signed at Seattle, Washington this 24<sup>th</sup> day of July, 2020.

14 WILLIAMS, KASTNER & GIBBS PLLC

15 By s/Catherine Berry  
16 Catherine Berry, Legal Assistant  
17 [cberry@williamskastner.com](mailto:cberry@williamskastner.com)  
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